

**Before the
Federal Communications Commission
Washington, DC 20554**

FCC 17M-13

In the Matter of)	WT Docket No. 08-20	10776
)		
WILLIAM F. CROWELL)	FCC File No. 0002928684	
)		
Application to Renew License for Amateur)		
Radio Service Station W6WBJ)		

MEMORANDUM OPINION AND ORDER

Issued: March 28, 2017

Released: March 28, 2017

I. FACTUAL BACKGROUND

A. The Hearing Designation Order

1. On February 12, 2008, the Wireless Telecommunications Bureau issued a Hearing Designation Order (*HDO*)¹ to determine whether the application of William F. Crowell (Crowell) to renew his license for Amateur Radio Service Station W6WBJ should be granted, in light of reports that Crowell “willfully and repeatedly” engages in unlawful Commission-related activities. *HDO* at 1.

2. The *HDO* set specific issues to determine whether:

- a. William F. Crowell violated Section 333 of the Communications Act of 1934 and Section 97.101(d) of the Commission’s Rules, by intentionally interfering with and/or otherwise interrupting radio communications;
- b. William F. Crowell violated Section 97.113(b) of the Rules by transmitting one-way communications on amateur frequencies;
- c. William F. Crowell violated Section 97.113(a)(4) of the Rules by transmitting indecent language;
- d. William F. Crowell violated Section 97.113(a)(4) of the Rules by transmitting music;

¹ *In re William F. Crowell*, Hearing Designation Order, WT Docket No. 08-20, DA 08-361 (rel. Feb. 12, 2008).

- e. William F. Crowell is qualified to be and remain a Commission licensee; and
- f. The captioned application filed by William F. Crowell should be granted.

HDO at 3-4. The Enforcement Bureau (Bureau) is prosecuting these issues. *Id.* at 4, para. 13.

B. Discovery Motions and Rulings

3. On February 15, 2008, the case was originally assigned to Judge Arthur Steinberg as Presiding Judge. *Order*, FCC 08M-08. A prehearing conference was set for April 2, 2008. *Id.* At the conference, a procedural schedule was set wherein discovery was to be completed by August 29, 2008. The hearing was to commence thereafter on October 21, 2008. *Order*, FCC 08M-22 at 1-2 (rel. April 4, 2008). Judge Steinberg ruled on Crowell's first motion to compel the Bureau to respond to his first set of interrogatories, ordering the Bureau to respond on or before April 9, 2008. *Id.* at 1.

4. On August 29, 2008, the procedural schedule was ordered in abeyance in response to the parties' joint motion for a continuance that was filed on July 31, 2008. *Order*, FCC 08M-42. Shortly prior thereto, Crowell had filed a similar motion to suspend – the intended purpose of which is unclear, given the subsequent joint motion.

5. On December 31, 2008, Judge Steinberg ruled on a Bureau motion to compel responses to interrogatories. *Memorandum Opinion & Order*, FCC 08M-59. Most of Crowell's objections were denied because they had no legal basis, and because there was no authority cited by Crowell to support his positions. *Id.* at 1-2, paras. 2, 3, 5, & 6. Crowell even objected to several of the Bureau's interrogatories on grounds that the Bureau "violated the priority of discovery" by objecting to many of Crowell's interrogatories "in bad faith." *See* Applicant's Answers and Objections to Enforcement Bureau's First Set of Interrogatories Propounded to Applicant (June 10, 2008) (hereinafter, "Applicant's Answers and Objections"). Notwithstanding Crowell's unsupported accusation of bad faith by the Bureau, there is no recognized objection called "priority of discovery."

6. Crowell also objected to several interrogatories on grounds that "the Enforcement Bureau lacks the authority to compel the production of evidence because it has not made a preliminary showing that it has actual intercepts evidencing a violation of Part 97." *Id.* Nor is that a recognized legal basis for refusing to answer an interrogatory. Moreover, "the partial 'answers' that Mr. Crowell did provide to several interrogatories [were] argumentative, conclusory, and/or unresponsive." *Order*, FCC 08M-59 at 2, para. 8.

7. Judge Steinberg also ruled on Crowell's second motion to compel responses to interrogatories, again sustaining the majority of the Bureau's objections on proper grounds, noting that the information sought did not "appear[] reasonably calculated to lead to the discovery of admissible evidence," and because interrogatories were argumentative and/or called

for legal analyses or conclusions. *Memorandum Opinion & Order*, FCC 08M-57 (rel. Dec. 31, 2008).

8. Judge Steinberg also ruled on the Bureau's motion to compel production of documents. *Memorandum Opinion & Order*, FCC 08M-60 (rel. Dec. 31, 2008). Many of Crowell's objections were denied because "[t]hey have no legal basis and Mr. Crowell cites no authority supporting his position." *Id.* at 1-2, paras. 2, 3, & 5. Judge Steinberg also noted that Crowell's document production appeared incomplete. Some documents referred to attachments, but the referenced attachments were not included. *Id.* at 2, para. 8. Crowell had also described specific documents that he had not produced. *Id.* at 2, para. 11.

9. On January 8, 2009, upon Judge Steinberg's retirement, the case was reassigned to Chief Judge Sippel. *Reassignment Order*, FCC 09M-04. On January 14, 2009, Crowell filed a request to appeal all three of Judge Steinberg's discovery rulings on the grounds that "they violate various [uncited] court decisions which guarantee him the right to criticize and, indeed, ridicule the Commission and the Enforcement Bureau, without jeopardizing his right to license renewal" Applicant's Request for Permission to File Appeal from the Former Presiding [Judge]'s Interlocutory Rulings on Discovery at 2.

C. Interlocutory Appeal

10. Crowell acknowledged that the rule governing interlocutory appeals requires a "showing that the appeal presents a new or novel question of law or policy and that the ruling is such that error would be likely to require remand should the appeal be deferred and raised as an exception," 47 C.F.R. § 1.301(b). But he did not analyze facts, cite any authorities on point, or show how he met the requirements of § 1.301(b), and only made cursory reference to the rule.

11. On April 8, 2010, the Presiding Judge denied Crowell's request to appeal on the grounds that the request was untimely and had not been shown to present "a new or novel question of law." *Order*, FCC 10M-01, at 4. The parties were also required to file joint status report by May 17, 2010, and trial briefs by May 24, 2010. *Id.* at 4-5.

D. Motion to Censure

12. On February 3, 2009, Crowell had filed a Motion to Censure, Suspend or Disbar Attorneys, asserting that Bureau counsel had made false representations to both of the Presiding Judges. However, as explained in *Order*, FCC 09M-17 (rel. Feb. 23, 2009), the Presiding Judge had no authority to rule on the motion as "[t]he Commission rules assign exclusive jurisdiction to the General Counsel on questions of censure, suspension or disbarment of attorneys." Then on February 18, 2009, Crowell filed a third motion to compel responses to his interrogatories. On April 15, 2010, the Presiding Judge denied the motion as untimely. *See Order*, FCC 10M-02 at 3.

E. Telephone Conference

13. By May 20, 2010, discovery had reached a stalemate. So the Presiding Judge conducted an informal, unrecorded telephone conference at the request of counsel. It became clear to the Presiding Judge “that the parties had not yet completed discovery or any meaningful trial preparation.” *Order*, FCC 10M-03 (rel. May 21, 2010). Consequently, the Presiding Judge ordered that the date for submitting trial briefs be deferred until October 22, 2010. *Id.*

F. Crowell’s Offensive Motion

14. On July 29, 2010, the Presiding Judge, on his own motion, issued *Memorandum Opinion & Order*, FCC 10M-04 (*MO&O*), condemning “the offensive nature” of Crowell’s Motion to Vacate Dates For Filing Joint Status Report and Trial Brief that Crowell had previously filed on April 19, 2010. There were “spurious and groundless arguments . . . and/or insulting *ad hominem* characterizations directed against the Enforcement Bureau, Bureau Counsel and/or the Presiding Judge.” *MO&O*, 10M-04 at 9. Also, it was held that Crowell’s pleading “may be considered for inclusion in one or more added issues alleging abuses of process.” *Id.* Ultimately, the Presiding Judge saw fit to order Crowell to show cause as to why there should be no abuse of process issues added.

G. Improper Pleading

15. On August 30, 2010, Crowell filed his petition to disqualify the Presiding Judge. As a procedural instruction, Crowell was ordered to file separately his response to the order and his motion to disqualify, as required by 47 CFR § 1.44. *See Order*, FCC 10M-07 (rel. Sept. 15, 2010). On September 21, Crowell filed his response to the order to show cause, and the petition to disqualify on October 7.²

H. Aborted Deposition

16. On September 22, 2010, Crowell filed a motion opposing the taking of his deposition. The motion was filed the day after the Bureau served notice of his deposition for October 14, 2010. Crowell claimed that he “never agreed to said date” *See Applicant’s Motion Opposing the Taking of His Deposition* at 1. Yet Crowell had advised the Bureau that he was available on that date, a fact established by email exchanges between the Bureau and Crowell. Enforcement Bureau’s Response to Opposition to Notice of Deposition, Attachment A (Sept. 24, 2010). After advising that he was available, Crowell insisted on self-declared “ground rules.” Absolutely no authority was cited by Crowell for unilaterally demanding “ground rules” for the deposition. Crowell even demanded that the Bureau disclose the number of people it would bring to the deposition so that he could bring the same number of people. It was then held in *Order*, FCC 10M-10 (rel. Oct. 7, 2010), that “Mr. Crowell has failed to show under the

² The petition to disqualify is addressed below.

Communications Act or Commission Rules any basis for setting staffing requirements for the taking of his deposition” *Id.* at 2. In the same order, the Presiding Judge ultimately denied Crowell’s motion.³

I. Sequence of Trial Briefs

17. On October 22, 2010, the Judge once again ordered the parties to file status reports on October 28. *Order*, FCC 10M-1. The Bureau was ordered to file a trial brief no later than October 29; Crowell had filed his trial brief prematurely on October 15. All other procedural dates were suspended until further notice. Subsequently, in *Order*, FCC 10M-13 (rel. Oct. 29, 2010), in response to the Bureau’s Request for Clarification,⁴ it was ordered that the Bureau could defer its trial brief until a future date to be decided. Then Crowell could supplement his trial brief.

J. Summary Decision and Undecided Matters

18. On August 31, 2010, Crowell filed a Motion for Summary Decision based on a rejected argument that amateur radio service was exempt from the Character Policy. Crowell’s Motion for Summary Decision was decided against Crowell on March 28, 2017, in *Order*, 17M-12. Several other matters still remain: Crowell’s Third Request for Production of Documents and the Bureau’s Motion to Strike Discovery Request; the Presiding Judge’s Order to Show Cause why an abuse of process issue should not be added, Crowell’s Response, and the Bureau’s Opposition to Crowell’s Response; and Crowell’s Motion to Preclude Enforcement Bureau From Introducing Any Intercepts of Applicant Into Evidence For Failure to Comply With Discovery Orders. Crowell’s Motion for Disqualification is ruled upon below.

II. JUDICIAL DISQUALIFICATION

19. Procedures for disqualification of a presiding administrative law judge during the course of an adjudication are prescribed in Section 1.245 of the Commission rules, which provides that:

(b) Any party may request the presiding [judge] to withdraw on the grounds of personal bias or other disqualification.

(1) The person seeking disqualification shall file with the presiding [judge] an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. Such affidavit shall be filed not later than 5 days before the commencement of the hearing unless, for good cause shown,

³ Crowell also filed an unauthorized reply. The Bureau objected, but the Presiding Judge dismissed the Bureau’s motion to strike as moot.

⁴ The Bureau coincidentally had filed a Request for Extension of Time on the same day *Order*, FCC 10M-11, was issued, and subsequently filed the Request for Clarification, since its initial request for extensions had not been explicitly addressed.

additional time is necessary.

(2) The presiding [judge] may file a response to the affidavit; and if he believes himself not disqualified, shall so rule and proceed with the hearing.

(3) The person seeking disqualification may appeal a ruling of disqualification, and, in that event, shall do so at the time the ruling is made. Unless an appeal of the ruling is filed at this time, the right to request withdrawal of the presiding [judge] shall be deemed waived.

(4) If an appeal of the ruling is filed, the presiding [judge] shall certify the question, together with the affidavit and any response filed in connection therewith, to the Commission. The hearing shall be suspended pending a ruling on the question by the Commission.

(5) The Commission may rule on the question without hearing, or it may require testimony or argument on the issues raised.

(6) The affidavit, response, testimony or argument thereon, and the Commission's decision shall be part of the record in the case.

III. DISQUALIFICATION MOTION

20. Crowell is a member of the California State Bar.⁵ He filed a baseless petition to disqualify the Presiding Judge on October 12, 2010. Crowell asserts in repetitious words and phrases that insult rather than inform:

By his statements, rulings and actions herein, the ALJ [Presiding Judge] has clearly demonstrated himself to be unalterably biased and prejudiced against Applicant. Said bias and prejudice stem from the ALJ's inability or unwillingness to learn the law applicable to the amateur radio service; his emotional insecurity resulting when said lack of knowledge is exposed; his blatant immorality and poor character; and from his obvious willingness to viciously distort both the law and Applicant's arguments in order to screw Applicant.

Petition at 2.

⁵ California Bar No. 53366 (admitted Dec. 1972; inactive).

21. Crowell has not made one fact-specific allegation, nor any legal argument based in fact to support his broad, conclusory charges, *i.e.*, “statements, rulings and actions” attributed to the Presiding Judge. Virtually all of his charges are in his own words, and not in the words of the Presiding Judge. To the extent possible, this ruling will address the arguments specifically proffered by Crowell. But it is noted here that the one characteristic common to all of Crowell’s assertions is the absence of any basis in fact for his assertions. Only unsupported conclusory allegations and arguments are asserted by Crowell.

22. Crowell concludes that both the Presiding Judge and the Enforcement Bureau are distorting Crowell’s arguments, thereby attempting to punish Crowell. He ignores, misstates, or misunderstands the law throughout. These allegations are repetitious and too numerous to warrant mention here. See Petition at 3-4 and *passim*.

23. Crowell argues that he is the victim of a concocted character case that is made of “whole cloth.” He describes the situation as the fault of the Commission, the Presiding Judge, and/or the Bureau – everyone except himself. He even asserts, with no showing, that the Bureau has attempted to “bootstrap a character issue into the primary thrust of the case.” At the same time, Crowell repeatedly criticizes and demeans the Presiding Judge. This is illustrated by the following:

[T]he ALJ [Presiding Judge] has constantly displayed both his bad character and his incompetence to preside over this case by wrongfully siding with and encouraging the Bureau to pursue said phony, concocted character issue.

Petition at 5.

24. Crowell alleges an unsubstantiated and conclusory recitation of seventeen delicts ascribed to the Presiding Judge. These are, in Crowell’s words:

[1.] The ALJ Immorally, Deceitfully and Prejudicially Denied Applicant Due Process In Refusing To Permit Him to Brief the Issue of Whether His Pleadings Were Filed When Received By the Commission ...

[2.] The ALJ Immorally, Deceitfully and Prejudicially Claims That Applicant Belongs In a Class of Licensees Who Have Been Convicted of a Serious Felony ...

[3.] The ALJ Is Immorally, Deceitfully and Prejudicially Attempting To Assist the Enforcement Bureau to Concoct a Character Rule Issue Against Applicant ...

[4.] The ALJ Immorally, Deceitfully and Prejudicially Allows the Enforcement Bureau to Disparage, Defame and Deprecate

Applicant for Absolutely No Reason, and When Applicant Attempts to Defend Himself Against Said False Charges, The ALJ Threatens to Hold Him In Contempt ...

- [5.] The ALJ Immorally, Deceitfully and Prejudicially Distorts Applicant's Argument By Claiming He Objects To Not Being Included In A Group of Convicted Felons ...
- [6.] The ALJ Immorally, Deceitfully and Prejudicially Attempts to Punish Applicant for Truthfully Pointing Out That Riley Hollingsworth Traveled Around the U.S. on Meaningless Junkets at Taxpayer Expense ...
- [7.] The ALJ Immorally, Deceitfully and Prejudicially Allows the Bureau to Go on a Witch Hunt Under the Guise of a Character Rule Inquiry Where No Factual Predicate Exists Therefor ...
- [8.] The ALJ Immorally, Deceitfully and Prejudicially Refuses to Learn the Law Pertaining to Amateur Radio ...
- [9.] The ALJ Imorally *[sic]*, Deceitfully and Prejudicially Claims That Applicant is Guilty of Contempt Merely Because He Desires to Preserve His Objections to the Bureau's Interrogatories ...
- [10.] The ALJ Immorally, Deceitfully and Prejudicially Claims That Applicant Admitted Transmitting Indecent Materials ...
- [11.] The ALJ Immorally, Deceitfully and Prejudicially Claims There is Anything Illegal About Playing Recordings in the Amateur Service ...
- [12.] The ALJ Immorally, Deceitfully and Prejudicially Claims There Was Something Wrong or Illegal About the Message He Left on the Message board of Emily Burnham, K6WGB ...
- [13.] The ALJ Immorally, Deceitfully and Prejudicially Accuses Applicant of Impeding the Hearing Process With "Harassment of Opposing Parties Which Threatens the Integrity of the Commission's Licensing Process *[sic]* ...
- [14.] The ALJ Immorally, Deceitfully and Prejudicially Claims That Applicant's Filings Were Prohibited by 47 CFR §§ 1.24 and 1.52 ...
- [15.] The ALJ Immorally, Deceitfully and Prejudicially Proposes to Expand The Issues Herein Sua Sponte to Include Applicant's So-Called "Abuse of Process", Whereas the ALJ Denied

Applicant the Right to Expand The Issues to Include Riley Hollingsworth's Abuse of Discretion ...

[16.] The ALJ Immorally, Deceitfully and Prejudicially Attempts to Liken My Attempts to Defend Myself Against the Commission's False and Illegal Charges to the Licensee Conduct Appearing in the Case of David Ortiz Radio Corp. v. FCC ...

[17.] The ALJ Immorally, Deceitfully and Prejudicially Claims That the Recordings, Sent to the Bureau By Hams as a Result of a Concerted Campaign by Riley Hollingsworth to Concoct a Case Against Applicant, Are Admissible in Evidence Herein...

Petition at 2-4 (underlining in original). The allegations above are without foundation since the Presiding Judge has not seen or read any item of evidence and will not be able to see or read evidence until it is offered and received in evidence.

25. Crowell also marked the Commission for criticism:

It was the Commission itself which raised the false legally punishable charges.

Petition at 10 (emphasis added).

IV. ANALYSIS

26. Crowell seems to believe that the agency is persecuting him because it doesn't like the way he has criticized the Commission on the Internet.⁶ The criticisms continue in a Motion to Vacate Dates for Filing Joint Status Report and Trial Brief wherein Crowell alleges as "convincing proof" attempts by the Commission and the Presiding Judge "to censor my speech."⁷ He complains that the Presiding Judge cites amateur radio cases involving "child molestation" (*Titus*)⁸ and other felonies involving "moral turpitude" (*Mitnick*),⁹ and defends his aspersive comportment as "free speech."

27. Crowell characterizes the FCC as a "failed agency," charging by implication that the FCC is an agency that is "completely out of control" and which "customarily ignores the law."¹⁰ Crowell then leaves the Commission in the dark to find those so-called "false charges" that are alleged to have been raised by the Commission. See Petition at 5.

⁶ Crowell Motion to Vacate at 4.

⁷ *Id.* at 5.

⁸ *In re David Titus*, 25 FCC Rcd. 2390 (2010).

⁹ *In re Kevin David Mitnick*, 17 FCC Rcd 27028 (2002).

¹⁰ Crowell Motion to Vacate at 10.

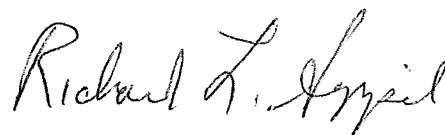
28. A sequence of related procedural events demonstrates how Crowell uses Commission procedures in an abusive manner aimed at derailing this proceeding. Crowell filed motions seeking additional time for reporting case status and submitting trial briefs. The motions were determined to be moot. *Memorandum Opinion and Order* FCC 10M-04, released July 29, 2010 (*MO&O*) at 1. His Motion to Vacate a date for filing contained “offensive” matter which was addressed by the Presiding Judge in the *MO&O*. Crowell proffered no good cause for additional time in a motion that “questione[d] Commission motive.” And he attacked the Presiding Judge’s “moral qualification to adjudicate” while charging an “attempted censorship” of Crowell’s speech by both the Commission and the Presiding Judge. See Crowell Motion¹¹ at 4-5. Such back-of-the-hand aspersions show a callous disrespect for Commission hearing processes and a continuing course of conduct by Crowell of process abuse of Commission rules which only allow motions for relief that are filed in good faith, which is found to be lacking here.¹²

29. The Presiding Judge finds that William F. Crowell has failed to state any reason why the Presiding Judge should not continue to preside in the preparation, discovery, and trial of the captioned Commission proceeding. The Presiding Judge further finds that Crowell has not shown that he has been prejudiced or shown bias by the Presiding Judge in any order, directive, statement, or comment in the course of this proceeding.

30. Therefore, Crowell’s Motion to Disqualify the Presiding Judge is **DENIED**.

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION¹³



Richard L. Sippel
Chief Administrative Law Judge

¹¹ Applicant’s Motion to Vacate dates for Filing Joint Status Report and Trial Brief, filed April 19, 2010. (Crowell Motion.)

¹² See 47 CFR § 1.734(c).

¹³ Courtesy copies of this Memorandum Opinion and Order will be sent via email to all counsel of record and to Crowell on the date of issuance.